

Before the  
Federal Communications Commission  
Washington, DC 20554

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EOC-111113000

In the Matter of )  
)  
Requests for Review and Waiver of the )  
Decisions of the )  
Universal Service Administrator by )  
)  
Blessed Sacrament Catholic School )  
Newark, New Jersey )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-292399

CC Docket No. 96-45 ✓

CC Docket No. 97-21

**ORDER**

**Adopted: January 8, 2003**

**Released: January 9, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Blessed Sacrament Catholic School (Blessed Sacrament), Newark, New Jersey.<sup>1</sup> Blessed Sacrament seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Blessed Sacrament's appeal on the grounds that it was untimely filed.<sup>2</sup> For the reasons set forth below, we affirm SLD's rejection and deny Blessed Sacrament's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on June 3, 2002, approving Blessed Sacrament's request for discounted services under the schools and libraries universal service support mechanism.<sup>3</sup> Specifically, SLD approved Blessed Sacrament's request for discounts for Internet Access. Funding Request Numbers (FRNs) 747795, 747298, 748939.<sup>4</sup> On September 30, 2002, Blessed Sacrament filed an appeal of SLD's decision stating that during the 471 audit process it noticed that it submitted incorrect numbers related to its student population

<sup>1</sup> Letter from Scott DeCarolis, Blessed Sacrament Catholic School, to Federal Communications Commission, filed September 16, 2002 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 41 C.F.R. § 54.719(c).

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Martel, Blessed Sacrament Catholic School, dated June 3, 2002 (Funding Commitment Decision Letter).

<sup>4</sup> *Id.*

and discount levels, dropping its discount percentage from 90% to 80%.<sup>5</sup> On October 1, 2002, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Blessed Sacrament's appeal because it was received more than 60 days after the June 3, 2002 Funding Commitment Decision Letter was issued.<sup>6</sup> Blessed Sacrament subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.<sup>7</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>8</sup> Because the Blessed Sacrament's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Blessed Sacrament is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of its funding request, we deny that request as well.<sup>9</sup> The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.<sup>10</sup> Blessed Sacrament has not shown good cause for the untimely filing of its appeal with SLD. Blessed Sacrament states that the technology coordinator at Blessed Sacrament was forced to take an emergency medical leave of absence and as a result, Blessed Sacrament was prevented from filing the appeal in a timely fashion.<sup>11</sup>

5. We conclude that Blessed Sacrament has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>12</sup> In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

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<sup>5</sup> Letter from Scott DeCarolis, Blessed Sacrament Catholic School, to Schools and Libraries Division, Universal Service Administrative Company, filed September 30, 2002 (Request for Administrator Review).

<sup>6</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Scott DeCarolis, Blessed Sacrament Catholic School, dated October 1, 2002 (Administrator's Decision on Appeal).

<sup>7</sup> 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 339 (Com. Car. Bur. rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002).

<sup>8</sup> 47 C.F.R. § 1.7

<sup>9</sup> See 47 C.F.R. § 54.720(b)

<sup>10</sup> See 47 C.F.R. § 1.3

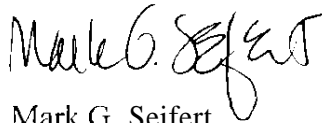
<sup>11</sup> Request for Waiver *ut supra*

<sup>12</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the burden of adhering strictly to its filing deadlines. In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. **An** applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf, even when such persons are away from the office on medical leave or otherwise incapacitated.<sup>17</sup> Here, Blessed Sacrament fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed on September 16, 2002, by Blessed Sacrament Catholic School, Newark, New Jersey, as well as the request to waive the deadline for filing its appeal with SLD ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>17</sup> See, e.g., *Request for Review by New Orleans Public Schools, New Orleans, Louisiana, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-201456, 201463, 201309, 201449, and 201493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 16653 (Coin. Car. Bur. rel. September 18, 2001), para. 17 (unavailability of responsible staffperson due to sick leave is not a basis for granting an appeal).

